

AMENDED IN SENATE JANUARY 5, 2006

**SENATE BILL**

**No. 294**

**Introduced by Senator Morrow**

February 16, 2005

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An act to ~~amend Section 1239 of~~ *add Section 1509 to* the Penal Code, relating to ~~appeals~~ *habeas corpus*.

LEGISLATIVE COUNSEL'S DIGEST

SB 294, as amended, Morrow. ~~Automatic appeals: waiver of right.~~ *Habeas corpus.*

*Existing law provides for a writ of habeas corpus for various purposes, including to collaterally attack a judgment, as specified.*

*This bill would instead provide for a motion for habeas corpus in order to collaterally attack a judgment. This would specify the time during which the motion may be made. The bill require the Supreme Court and the Judicial Council to adopt rules in this regard in connection with conforming to specified federal provisions relating to habeas corpus procedures in capital cases.*

~~Existing law grants a defendant an automatic appeal if he or she is sentenced to death.~~

~~This bill would allow a defendant to waive that automatic appeal in writing.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 1509 is added to the Penal Code, to  
2     read:

1     1509. (a) *A prisoner in custody under sentence of a*  
2     *California court who claims that the judgment is subject to*  
3     *collateral attack on any ground that was cognizable in habeas*  
4     *corpus prior to enactment of this section may move the court that*  
5     *imposed the sentence to vacate, set aside, or correct the sentence.*

6     (b) *In the case of a prisoner sentenced to death, after the entry*  
7     *of judgment in the trial court, the court shall offer counsel to the*  
8     *prisoner as provided in Section 68662 of the Government Code.*  
9     *Counsel appointed shall meet the qualifications established by*  
10    *rule for counsel in capital habeas cases, unless different*  
11    *qualifications are established by rule of court specifically for*  
12    *counsel appointed under this section, provided that prosecution*  
13    *and defense experience shall be considered equally for the*  
14    *purpose of qualification.*

15    (c) *Either party may appeal the decision of the court on the*  
16    *motion to the court that had jurisdiction of the appeal from the*  
17    *judgment.*

18    (d) *Except as provided in subdivision (e), in capital cases the*  
19    *initial motion that shall be filed within one year of the order*  
20    *entered under subdivision (b), and in noncapital cases the initial*  
21    *motion shall be filed within one year of the date the prisoner is*  
22    *appointed counsel or retains counsel, or within five years of the*  
23    *judgment, whichever is earlier.*

24    (e) *An initial motion that is untimely under subdivision (d) or*  
25    *a successive motion whenever filed shall be dismissed unless the*  
26    *court finds, by the preponderance of all available evidence,*  
27    *whether or not admissible at trial, that the defendant is actually*  
28    *innocent of the crime of which he or she was convicted. A claim*  
29    *based on voluntary intoxication, a claim based on mental disease*  
30    *or defect, or a claim that goes only to sentence is not a claim of*  
31    *innocence for this purpose.*

32    (f) *An application for writ of habeas corpus shall not be*  
33    *considered on the basis of any claim that was or could have been*  
34    *considered under this section.*

35    (g) *It is the policy of the State of California to qualify for*  
36    *Chapter 154 of Title 28 of the United States Code. The Supreme*  
37    *Court and the Judicial Council shall adopt rules as necessary to*  
38    *achieve and maintain qualification under that chapter.*

39    (h) *This section shall apply to all cases where judgment is*  
40    *entered after the effective date of this section and all cases where*

1 *judgment was entered earlier but no application for habeas*  
2 *corpus has been filed by the effective date. If a habeas petition is*  
3 *pending on the effective date of this section, the court may*  
4 *convert it to a motion under this section and transfer it to the*  
5 *court that imposed the sentence.*

6 ~~SECTION 1. Section 1239 of the Penal Code is amended to~~  
7 ~~read:~~

8 ~~1239. (a) An appeal may be taken by the defendant or his or~~  
9 ~~her counsel, or by counsel for the people, in the manner provided~~  
10 ~~in rules adopted by the Judicial Council.~~

11 ~~(b) (1) When upon any plea a judgment of death is rendered,~~  
12 ~~an appeal is automatically taken by the defendant without any~~  
13 ~~action by him or her or his or her counsel. The defendant's trial~~  
14 ~~counsel, whether retained by the defendant or court appointed,~~  
15 ~~shall continue to represent the defendant until completing the~~  
16 ~~additional duties set forth in paragraph (1) of subdivision (c) of~~  
17 ~~Section 1240.1.~~

18 ~~(2) A defendant may affirmatively waive the right to an~~  
19 ~~automatic appeal in writing.~~